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12 *Attorneys for Defendants*

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17 REARDEN LLC and REARDEN MOVA
18 LLC,

19 Plaintiffs,

20 vs.

21 WALT DISNEY PICTURES, a California
corporation, MARVEL STUDIOS, LLC, a
22 Delaware limited liability company, MVL
PRODUCTIONS LLC, a Delaware limited
23 liability company, INFINITY
PRODUCTIONS LLC, a Delaware limited
24 liability Company, ASSEMBLED
25 PRODUCTIONS II LLC, a Delaware limited
liability company,

26 Defendants.
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Case No. 4:17-cv-04006-JST-SK

**DECLARATION OF KELLY M. KLAUS
IN SUPPORT OF MOTION TO
PRECLUDE REARDEN'S RELIANCE ON
UNTIMELY "MAYA SCRIPTS
INFRINGEMENT" THEORY**

Date: August 31, 2023*
Time: 2:00 p.m.
Judge: Hon. Jon S. Tigar
Ctm.: 6 (2nd Floor)

[Filed concurrently: Notice of Motion and
Motion to Preclude Rearden's Reliance on
Untimely "Maya Scripts Infringement"
Theory, Declaration of Stephen H. Lane,
[Proposed] Order, *Stipulation and Proposed
Order to Shorten Time on Briefing and
Hearing]

1 I, Kelly M. Klaus, hereby declare:

2 1. I am admitted to practice before all of the courts of the State of California and this
3 Court. I am a partner in the law firm of Munger, Tolles & Olson LLP, counsel for Defendants in
4 the above-captioned matter. I submit this declaration in support of Defendants' Motion in Limine
5 to Preclude Rearden's Reliance on Untimely "Maya Scripts Infringement" Theory. Except as
6 stated on information and belief, the contents of this declaration are based on my personal
7 knowledge. Where matters are stated on information or belief, they are based on information
8 provided to me by other lawyers at the firm working on this case who have knowledge of those
9 matters, and I believe them to be true. If called as a witness, I could and would testify
10 competently to the matters set forth in this declaration.

11 ***2019 Production of MOVA Contour Source Code***

12 2. On August 27, 2018, Defendants served their First Set of Requests for Production
13 (Nos. 1-54) and Demands for Inspection (Nos. 1-2) to Rearden. Attached as Exhibit 1 is a true
14 and correct copy of those requests.

15 3. On October 3, 2018, Rearden served its responses to Defendants' First Set of
16 Requests for Production. Attached as Exhibit 2 is a true and correct copy of those responses.

17 4. Between January 15 and 17, 2019, Rearden made the source code for the "MOVA
18 Contour program" available for review by Defendants' consulting source code expert, Dr. David
19 Cummings. In connection with Dr. Cummings's review and in accordance with the Protective
20 Order, Rearden produced a directory of all the files in the source code Rearden produced.
21 Attached as Exhibit 3 is a true and correct copy of the source code directory that Rearden provided
22 in 2019.

23 5. When Rearden made the source code available for Dr. Cummings to review in
24 2019, and after that review, Rearden did not indicate that it was missing any files from the MOVA
25 Contour program.

26 ***2023 Source Code Review***

27 6. In March of this year, Defendants notified Rearden they had retained a new
28 technical expert to opine on source code matters, Dr. Stephen Lane. On April 26, 2023,

1 Defendants requested that Rearden produce the source code for the MOVA Contour program for
2 Dr. Lane to review. Attached as Exhibit 4 is a true and correct copy of the correspondence making
3 this request.

4 7. Rearden subsequently agreed to make the source code for the MOVA Contour
5 program available for Dr. Lane to review, but required that the review proceed in accordance with
6 the Protective Order's restrictive provisions for the duration and other particulars of that review.
7 Rearden thus made the source code available for Dr. Lane to review only on a "source code
8 computer," only in the Boston office of Rearden's outside counsel, and only during business hours
9 between May 15 and 17, 2023.

10 8. In connection with Dr. Lane's review, Defendants asked that Rearden provide a
11 complete list of the files on the source code computer. On May 11, 2023, Rearden told
12 Defendants that the source code computer for Dr. Lane's review would be the same computer
13 Rearden made available to Dr. Cummings in 2019. Rearden also indicated that the source code
14 files loaded onto the source code computer would be the same files that had been loaded onto it in
15 2019 in connection with Dr. Cumming's review. Attached as Exhibit 5 is a true and correct copy
16 of the correspondence with Rearden's counsel regarding these matters.

17 9. Also on May 11, 2023, Rearden stated that it was loading onto the source code
18 computer *new* files that had not been part of the 2019 production and review. Rearden stated that
19 these new files were "Maya files containing MOVA Contour source code," and that Rearden had
20 "recovered" these files from DD3. On May 14, 2023, Rearden again confirmed that it was loading
21 these new files onto the source code computer. Attached as Exhibit 6 is a true and correct copy of
22 the correspondence with Rearden's counsel regarding these matters.

23 10. Defendants repeatedly requested that Rearden produce a directory of any and all
24 new files. On May 15, 2023, Rearden produced a directory of the additional Maya files that it
25 would be producing for Dr. Lane's review. Attached as Exhibit 7 is a true and correct copy of the
26 directory of Maya files that Rearden provided. Rearden has not produced any listing of the Maya
27 scripts it claims to be part of the MOVA Contour software program.

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1 19. Rearden served the rebuttal expert report of Alberto Menache on June 1, 2023.
2 Attached as Exhibit 16 is a true and correct copy of that report.

3 ***Meet and Confer***

4 20. Since early May 2023 and prior to filing this motion, Defendants have engaged in
5 significant meet-and-confer discussions regarding the dispute. Counsel conferred pursuant to
6 Civil Local Rule 37-1 on June 8, 2023 to attempt to resolve the dispute, but were unable to reach a
7 resolution. Attached as Exhibit 17 is a true and correct copy of the parties' June 7-8, 2023
8 correspondence regarding meet-and-confer efforts.

9
10 I declare under penalty of perjury under the laws of the United States that the foregoing is
11 true and correct and that I executed this declaration this 9th day of June 2023 at San Francisco,
12 California.

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14 /s/ Kelly M. Klaus
15 Kelly M. Klaus
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